



Virginia  
Regulatory  
Town Hall

[townhall.virginia.gov](http://townhall.virginia.gov)

## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	
<b>Virginia Administrative Code (VAC) citation</b>	8 VAC 20 -700
<b>Regulation title</b>	Emergency Regulations for Conducting Division-Level Academic Reviews
<b>Action title</b>	Promulgate emergency regulations; followed by permanent regulations
<b>Document preparation date</b>	December 20, 2004

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Preamble

*The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

House Bill 1294, passed by the General Assembly and signed into law on April 15, 2004, gave the Board of Education the authority to require division-level academic reviews in school divisions where findings of school-level academic reviews show that the failure of the schools to reach full accreditation is related to the local school board’s failure to meet its responsibilities

under the Standards of Quality. House Bill 1294 also requires, in part, that the Board of Education promulgate regulations to implement the provisions of the act to be effective within 280 days of its enactment; therefore the present regulatory action promulgates the emergency regulations. The process for promulgating permanent regulations will be initiated concurrently with the promulgation of emergency regulations.

Emergency regulations are needed to ensure that the conducting of division-level academic reviews begins as close to the beginning of the 2004-2005 school year as practicable and to meet the 280-day timeline.

### Legal basis

*Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The Code of Virginia, § 22.1-16, states, “The Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title.”

HB 1294 enacted by the 2004 General Assembly amended § 22.1-253.13:3 of the Code to include the following provision: “When the Board of Education has obtained evidence through the school academic review process that the failure of schools within a division to achieve full accreditation status is related to division level failure to implement the Standards of Quality, the Board may require a division level academic review. After the conduct of such review and within the time specified by the Board of Education, each school board shall submit for approval by the Board of Education an improvement plan, setting forth specific actions and a schedule designed to ensure that schools within its division achieve full accreditation status. Such plans shall be part of the relevant school division’s six-year improvement plan pursuant to § 22.1-253.13:6.”

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The purpose of the regulation is to outline the process and procedures for conducting the division-level academic review and submitting the corrective action plan to the Board of Education. It specifically addresses the criteria for selection for the division-level academic review, the structure of the division-level academic review and the requirements for the division

improvement plans and corrective actions. In addition, it includes provision for reviews to be conducted by agencies or organizations other than the Department of Education when appropriate.

**Substance**

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
		NOTE: No current regulation exists.	

This is a new regulation, so there are no changes to existing regulations. The regulation is essential to provide the structure for the Board of Education and staff of the Department of Education for the orderly conduct of division-level academic reviews in selected school divisions. The regulation outlines the process and procedures for conducting the division-level academic review and submitting the corrective action plan to the Board of Education. It specifically addresses the criteria for selection for the division-level academic review, the structure of the division-level academic review and the requirements for the division improvement plans and corrective actions. In addition, it includes provision for reviews to be conducted by agencies or organizations other than the Department of Education when appropriate.

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

This is the least burdensome alternative that the agency could develop, and still meet the requirements of HB 1294 (2004) and the guidance we have received from the Office of the Attorney General.

## Family impact

*Please assess the impact of the emergency regulatory action on the institution of the family and family stability.*

---

The emergency action will serve to improve the quality of educational opportunities for the children in the commonwealth in school divisions where academic reviews are conducted. It will not: 1) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 2) strengthen or erode marital commitment; or 3) increase or decrease disposable family income.